

**CS FOR SENATE BILL NO. 20(2d JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/27/05

Referred: Finance

Sponsor(s): SENATOR DYSON

**A BILL**

**FOR AN ACT ENTITLED**

1   **"An Act relating to offenses against unborn children."**

2   **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3    \* **Section 1.** AS 11.41 is amended by adding new sections to article 1 to read:

4           **Sec. 11.41.150. Murder of an unborn child.** (a) A person commits the  
5           crime of murder of an unborn child if the person

6                       (1) with intent to cause the death of an unborn child or of another  
7           person, causes the death of an unborn child;

8                       (2) with intent to cause serious physical injury to an unborn child or to  
9           another person or knowing that the conduct is substantially certain to cause death or  
10          serious physical injury to an unborn child or to another person, causes the death of an  
11          unborn child;

12                      (3) while acting alone or with one or more persons, commits or  
13          attempts to commit arson in the first degree, kidnapping, sexual assault in the first  
14          degree, sexual assault in the second degree, sexual abuse of a minor in the first degree,  
15          sexual abuse of a minor in the second degree, burglary in the first degree, escape in the

1 first or second degree, robbery in any degree, or misconduct involving a controlled  
 2 substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or  
 3 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in  
 4 immediate flight from that crime, any person causes the death of an unborn child;

5 (4) knowingly engages in conduct that results in the death of an unborn  
 6 child under circumstances manifesting an extreme indifference to the value of human  
 7 life; for purposes of this paragraph, a pregnant woman's decision to remain in a  
 8 relationship in which domestic violence as defined in AS 18.66.990 has occurred does  
 9 not, by itself, constitute conduct manifesting an extreme indifference to the value of  
 10 human life.

11 (b) A person may not be convicted under (a)(3) of this section if the only  
 12 underlying crime is burglary, the sole purpose of the burglary is a criminal homicide,  
 13 and the unborn child killed is the intended victim of the defendant. However, if the  
 14 defendant causes the death of another unborn child, the defendant may be convicted  
 15 under (a)(3) of this section. Nothing in this subsection precludes a prosecution for or  
 16 conviction of murder in the first degree or murder in the second degree, murder of an  
 17 unborn child under AS 11.41.150(a)(1), (2), or (4), or any other crime.

18 (c) Murder of an unborn child is an unclassified felony.

19 **Sec. 11.41.160. Manslaughter of an unborn child.** (a) A person commits  
 20 the crime of manslaughter of an unborn child if, under circumstances not amounting to  
 21 murder of an unborn child, the person

22 (1) intentionally or knowingly causes the death of an unborn child; or

23 (2) recklessly causes the death of an unborn child by means of a  
 24 dangerous instrument.

25 (b) Manslaughter of an unborn child is a class A felony.

26 **Sec. 11.41.170. Criminally negligent homicide of an unborn child.** (a) A  
 27 person commits the crime of criminally negligent homicide of an unborn child if, with  
 28 criminal negligence, the person causes the death of an unborn child by means of a  
 29 dangerous instrument.

30 (b) Criminally negligent homicide of an unborn child is a class B felony.

31 **Sec. 11.41.180. Applicability of AS 11.41.150 - 11.41.170.** AS 11.41.150 -

1 11.41.170 do not apply to acts that

2 (1) cause the death of an unborn child if those acts were committed  
3 during a legal abortion to which the pregnant woman consented or a person authorized  
4 by law to act on her behalf consented, or for which such consent is implied by law; or

5 (2) are committed under usual and customary standards of medical  
6 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

7 \* **Sec. 2.** AS 11.41 is amended by adding new sections to article 2 to read:

8 **Sec. 11.41.280. Assault of an unborn child in the first degree.** (a) A  
9 person commits the crime of assault of an unborn child in the first degree if

10 (1) that person recklessly causes serious physical injury to an unborn  
11 child by means of a dangerous instrument;

12 (2) with intent to cause serious physical injury to an unborn child or to  
13 another person, that person causes serious physical injury to an unborn child;

14 (3) that person knowingly engages in conduct that results in serious  
15 physical injury to an unborn child under circumstances manifesting extreme  
16 indifference to the value of human life; for purposes of this paragraph, a pregnant  
17 woman's decision to remain in a relationship in which domestic violence as defined in  
18 AS 18.66.990 has occurred does not, by itself, constitute conduct manifesting extreme  
19 indifference to the value of human life; or

20 (4) that person recklessly causes serious physical injury to an unborn  
21 child by repeated assaults using a dangerous instrument, even if each assault  
22 individually does not cause serious physical injury.

23 (b) In a prosecution under this section, except for a multiple birth, the birth of  
24 a child before 37 weeks gestation with weight at birth of 2,500 grams or less is prima  
25 facie evidence of serious physical injury.

26 (c) Assault of an unborn child in the first degree is a class A felony.

27 **Sec. 11.41.282. Assault of an unborn child in the second degree.** (a) A  
28 person commits the crime of assault of an unborn child in the second degree if

29 (1) with intent to cause physical injury to an unborn child or to another  
30 person, that person causes serious physical injury to an unborn child; or

31 (2) that person recklessly causes serious physical injury to an unborn

1 child by repeated assaults, even if each assault individually does not cause serious  
2 physical injury.

3 (b) In a prosecution under this section, except for a multiple birth, the birth of  
4 a child before 37 weeks gestation with weight at birth of 2,500 grams or less is prima  
5 facie evidence of serious physical injury.

6 (c) Assault of an unborn child in the second degree is a class B felony.

7 **Sec. 11.41.289. Applicability of AS 11.41.280 and 11.41.282.** AS 11.41.280  
8 and 11.41.282 do not apply to acts that

9 (1) cause serious physical injury or physical injury to an unborn child  
10 if those acts were committed during a legal abortion to which the pregnant woman  
11 consented or a person authorized by law to act on her behalf consented, or for which  
12 consent is implied by law; or

13 (2) are committed under usual and customary standards of medical  
14 practice during diagnostic testing, therapeutic treatment, or to assist a pregnancy.

15 \* **Sec. 3.** AS 11.81.250(a) is amended to read:

16 (a) For purposes of sentencing under AS 12.55, all offenses defined in this  
17 title, except murder in the first and second degree, attempted murder in the first  
18 degree, solicitation to commit murder in the first degree, conspiracy to commit murder  
19 in the first degree, **murder of an unborn child**, sexual assault in the first degree,  
20 sexual abuse of a minor in the first degree, misconduct involving a controlled  
21 substance in the first degree, and kidnapping, are classified on the basis of their  
22 seriousness, according to the type of injury characteristically caused or risked by  
23 commission of the offense and the culpability of the offender. Except for murder in  
24 the first and second degree, attempted murder in the first degree, solicitation to  
25 commit murder in the first degree, conspiracy to commit murder in the first degree,  
26 **murder of an unborn child**, sexual assault in the first degree, sexual abuse of a minor  
27 in the first degree, misconduct involving a controlled substance in the first degree, and  
28 kidnapping, the offenses in this title are classified into the following categories:

29 (1) class A felonies, which characteristically involve conduct resulting  
30 in serious physical injury or a substantial risk of serious physical injury to a person;

31 (2) class B felonies, which characteristically involve conduct resulting

1 in less severe violence against a person than class A felonies, aggravated offenses  
2 against property interests, or aggravated offenses against public administration or  
3 order;

4 (3) class C felonies, which characteristically involve conduct serious  
5 enough to deserve felony classification but not serious enough to be classified as A or  
6 B felonies;

7 (4) class A misdemeanors, which characteristically involve less severe  
8 violence against a person, less serious offenses against property interests, less serious  
9 offenses against public administration or order, or less serious offenses against public  
10 health and decency than felonies;

11 (5) class B misdemeanors, which characteristically involve a minor  
12 risk of physical injury to a person, minor offenses against property interests, minor  
13 offenses against public administration or order, or minor offenses against public health  
14 and decency;

15 (6) violations, which characteristically involve conduct inappropriate  
16 to an orderly society but which do not denote criminality in their commission.

17 \* **Sec. 4.** AS 11.81.250(b) is amended to read:

18 (b) The classification of each felony defined in this title, except murder in the  
19 first and second degree, attempted murder in the first degree, solicitation to commit  
20 murder in the first degree, conspiracy to commit murder in the first degree, **murder of**  
21 **an unborn child**, sexual assault in the first degree, sexual abuse of a minor in the first  
22 degree, misconduct involving a controlled substance in the first degree, and  
23 kidnapping, is designated in the section defining it. A felony under Alaska law  
24 defined outside this title for which no penalty is specifically provided is a class C  
25 felony.

26 \* **Sec. 5.** AS 11.81.900(b) is amended by adding a new paragraph to read:

27 (64) "unborn child" means a member of the species Homo sapiens, at  
28 any stage of development, who is carried in the womb.

29 \* **Sec. 6.** AS 12.55.035(b) is amended to read:

30 (b) Except as provided in AS 12.55.036, upon conviction of an offense, a  
31 defendant who is not an organization may be sentenced to pay, unless otherwise

1 specified in the provision of law defining the offense, a fine of no more than

2 (1) \$500,000 for murder in the first or second degree, attempted  
3 murder in the first degree, **murder of an unborn child**, sexual assault in the first  
4 degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct  
5 involving a controlled substance in the first degree;

6 (2) \$250,000 for a class A felony;

7 (3) \$100,000 for a class B felony;

8 (4) \$50,000 for a class C felony;

9 (5) \$10,000 for a class A misdemeanor;

10 (6) \$2,000 for a class B misdemeanor;

11 (7) \$500 for a violation.

12 \* **Sec. 7.** AS 12.55.125(a) is amended to read:

13 (a) A defendant convicted of murder in the first degree **or murder of an**  
14 **unborn child under AS 11.41.150(a)(1)** shall be sentenced to a definite term of  
15 imprisonment of at least 20 years but not more than 99 years. A defendant convicted  
16 of murder in the first degree shall be sentenced to a mandatory term of imprisonment  
17 of 99 years when

18 (1) the defendant is convicted of the murder of a uniformed or  
19 otherwise clearly identified peace officer, fire fighter, or correctional employee who  
20 was engaged in the performance of official duties at the time of the murder;

21 (2) the defendant has been previously convicted of

22 (A) murder in the first degree under AS 11.41.100 or former  
23 AS 11.15.010 or 11.15.020;

24 (B) murder in the second degree under AS 11.41.110 or former  
25 AS 11.15.030; or

26 (C) homicide under the laws of another jurisdiction when the  
27 offense of which the defendant was convicted contains elements similar to first  
28 degree murder under AS 11.41.100 or second degree murder under  
29 AS 11.41.110;

30 (3) the court finds by clear and convincing evidence that the defendant  
31 subjected the murder victim to substantial physical torture; or

1 (4) the defendant is convicted of the murder of and personally caused  
 2 the death of a person, other than a participant, during a robbery.

3 \* **Sec. 8.** AS 12.55.125(b) is amended to read:

4 (b) A defendant convicted of attempted murder in the first degree, solicitation  
 5 to commit murder in the first degree, conspiracy to commit murder in the first degree,  
 6 kidnapping, or misconduct involving a controlled substance in the first degree shall be  
 7 sentenced to a definite term of imprisonment of at least five years but not more than  
 8 99 years. A defendant convicted of murder in the second degree **or murder of an**  
 9 **unborn child under AS 11.41.150(a)(2) - (4)** shall be sentenced to a definite term of  
 10 imprisonment of at least 10 years but not more than 99 years. A defendant convicted  
 11 of murder in the second degree shall be sentenced to a definite term of imprisonment  
 12 of at least 20 years but not more than 99 years when the defendant is convicted of the  
 13 murder of a child under 16 years of age and the court finds by clear and convincing  
 14 evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a  
 15 legal guardian, or a person occupying a position of authority in relation to the child; or  
 16 (2) caused the death of the child by committing a crime against a person under  
 17 AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of  
 18 authority" have the meanings given in AS 11.41.470.